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| APPLICATION NO.           | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.   | CONFIRMATION NO. |
|---------------------------|-------------|----------------------|-----------------------|------------------|
| 10/800,566                | 03/15/2004  | Frank Semersky       | GRM63BUSA             | 9823             |
| 26694                     | 7590        | 01/11/2006           | EXAMINER              |                  |
| VENABLE LLP               |             |                      | HARMON, CHRISTOPHER R |                  |
| P.O. BOX 34385            |             |                      | ART UNIT              |                  |
| WASHINGTON, DC 20045-9998 |             |                      | PAPER NUMBER          |                  |

3721

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/800,566

Applicant(s)

SEMERSKY ET AL.

Examiner

Christopher R. Harmon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/21/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Due to the effective filing date of the instant application, the amendment by the AIPA made to 35 U.S.C. 102(e) does not apply. The prior 35 USC 102(e) reading, (pre-AIPA 35 U.S.C. 102(e)) as presented above, has been applied.

2. Claims 3-21 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Prevot et al. (WO 00/51895).

The applied reference has a common assignee and inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prevot et al (#5,887,739) in view of Krishnakumar et al (#5,908,128).

Prevot et al substantially show the claimed subject matter including selecting a blow-molded PET container having a sidewall with a dome 12 with a wide-mouth opening with an upper label bumper 24 and lower label bumper 22. Prevot discloses packaging consumer goods, such as, pickles, applesauce and like food products (col 1 lines 12+). Prevot also discloses that the hot-fill process comprises filling containers with a food at an elevated temperature, sealing the containers and then cooling the containers (col 1 lines 32+). Prevot appears to disclose that the filling is done with a container that has not been heated so it appears that the container is at ambient temperature prior to filling. (col 1 lines 32). Prevot does not show some of the particulars of the container, such as, vertically spaced grooves in a sidewall, a footed base or crystallinity in excess of 25%. However, Krishnakumar et al. show vertically spaced grooves 137, 139; a footed base 143 so that the plastic container is able to withstand pasteurization to gain the advantages of plastic over glass (col 1 lines 42+). Krishnakumar also discloses the container has an average crystallinity of up to 30% (col 7 lines 1+). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide Prevot with vertical grooves and a footed base as well as the crystallinity as claimed as taught by Krishnakumar et al to withstand pasteurization with a plastic container. Regarding the dimensions of claims 20-21,

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Prevot discloses a 50% opening to sidewall diameter ratio, however states that the dimensions are "By way of example, and not by way of limitation" (column 4, lines 60+) thereby suggests variation. Krishnakumar teaches a wide-mouth opening of at least about 80% of the side wall cross section. It would have been obvious to one of ordinary skill in the art to use the dimension ratio as taught by Krishnakumar in order to construct a wide-mouth container retaining the desired properties. Regarding certain temperature ranges or time intervals as claimed, the examiner notes that applicants specification on p. 7 lines 20+ discloses the common pasteurization temperatures to be in the range of 195-210 F for 10 to 20 minutes. The examiner also notes that optimum ranges via experimentation are within the realm of ordinary skill in the art. See *in re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

### ***Response to Arguments***

5. Applicant's arguments filed 10/24/05 have been fully considered but they are not persuasive. Krishnakumar clearly shows vertically spaced grooves 137; see figures 3-4. Regarding claim 9, both Prevot and Krishnakumar disclose the use of vacuum panels in the sidewalls separated by stiffened portions resistant to distortion.

### ***Conclusion***

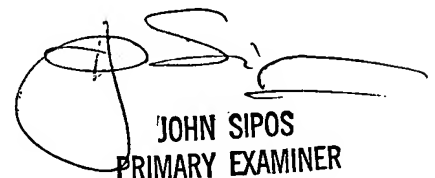
6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Harmon whose telephone number is (571) 272-4461. The examiner can normally be reached on Monday-Friday from 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JOHN SIPOS  
PRIMARY EXAMINER